

Employee Benefit Plans

Explanation

No. **9**

Required Distributions

The purpose of Worksheet Number 9 (Form 8387) and this explanation is to assist the specialist in determining whether a plan satisfies the distribution requirements of Internal Revenue Code section 401(a)(9).

The sections cited at the end of each paragraph of explanation are to the Internal Revenue Code and the proposed Income Tax Regulations.



I. Distributions Before Death

Lines a. - d. A qualified plan must provide that distributions to each participant must commence by the participant's required beginning date.

For years beginning before 1997, the required beginning date for a participant (other than a participant in a governmental or a church plan) is the April 1 of the calendar year following the calendar year in which the participant attains age 70½. The required beginning date for a participant in a governmental or church plan is the April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires.

For years beginning after 1996, the rules have changed for plans other than governmental and church plans.

The required beginning date for a participant (other than a 5-percent owner) is the April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires. A participant's accrued benefit in a defined benefit plan must be actuarially increased to take into account the period after age 70½ in which the participant was not receiving any benefits under the plan. (See Explanation #2A for a discussion of the actuarial increase). This required beginning date also applies to a participant in a governmental or church plan, except that no actuarial increase described above must be provided. The required beginning date for a 5-percent owner continues to be the April 1 of the calendar year following the calendar year in which the participant attains age 70½.

For years beginning after 1996, with respect to a participant (other than a 5-percent owner) there are several choices that can be made. The required plan language will vary depending on the three basic choices below.

(1) The plan may continue to require participants to commence benefit distributions by no later than April 1 of the calendar year after the calendar year in which a participant reaches age 70½. If a plan retains this language, the participant's designated beneficiary for purposes of section 401(a)(9) and whether recalculation applies will be determined based on any elections in effect as of that date, and a participant who dies after that date will be treated as dying after the required beginning date under section 401(a)(9) for purposes of determining distributions after death. However the required beginning date for purposes of the excise tax under section 4974 (excise tax on excess accumulations) and 402(c) (eligible rollover distributions) is determined as if the required beginning date was the April 1 of the calendar year after the later of the calendar year the participant attained age 70½ or retired. Thus, no excise tax will apply prior to the calendar year in which the participant (other than a 5-percent owner) retires and distributions prior to that calendar year will be eligible for rollover unless they are excepted for some other reason.

(2) The plan may be amended to provide that benefit distributions must commence by the April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, except that benefit distributions to a

participant with respect to benefits accrued before the later of the adoption or effective date of the amendment to the plan must commence by the April 1 of the calendar year following the calendar year in which the participant attains age 70½.

(3) The plan may provide that benefit distributions must commence by the later of the April 1 of the calendar year following the calendar year in which the participant attains age 70½ or retires.

If (3) applies, the plan must either contain provisions allowing a participant to elect whether or not to defer distributions, or retain an earlier distribution option for certain participants as described below.

A plan may provide for an offer allowing a participant attaining age 70½ in years after 1995 to make an election by April 1 of the calendar year following the year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996) to defer distributions until a date specified in the plan that is no later than the April 1 of the calendar year following the calendar year in which the participant retires, or to begin receiving distributions by the April 1 of the calendar year following the year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996).

A plan amendment to provide for such an offer must be made retroactively effective in accordance with the preamendment operation of the plan by the end of the remedial amendment period described in Rev. Proc. 97-41.

If a plan does not provide for an offer to defer distributions, the plan must provide that the preretirement age 70½ distribution option is only eliminated with respect to participants who reach age 70½ in or after a calendar year that begins after the later of December 31, 1998, or the adoption date of the amendment. (The plan may substitute a later calendar year for 1998.) A preretirement age 70½ distribution is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

Section 411(d)(6) provides that the accrued benefit of a participant may not be decreased by a plan amendment. The right to commence benefits in any form at a particular time is a separate optional form of benefit protected from elimination. The relief provisions of section 1.411(d)-4, Q&A 10, of the proposed income tax regulations, however, permit the elimination of the age 70½ option with respect to certain employees, as provided above, and also give examples of circumstances under which no relief is required under section 411(d)(6). The relief under section 411(d)(6) is only for amendments adopted within the remedial amendment period set forth in Revenue Procedures 97-41 and 98-14. [Note: the provision allowing elimination of the preretirement age 70½ distribution option with respect to certain employees is contained in proposed regulations. The guidance is only effective after final regulations are adopted, and it will only apply to amendments adopted and effective after that date.]

A plan may also provide for an offer allowing a participant attaining age 70½ in years prior to 1997 to stop distributions that had previously commenced and to recommence distributions at a later date that is no later than April 1 of the calendar year following the year in which the participant retires and that specifies, in accordance with Notice 97-75, that there is either a new annuity starting date upon recommencement for purposes of determining the applicable spousal consent rules under section 417, or that there is no new annuity starting date upon recommencement.

Any such amendments must be retroactively effective and must be made in accordance with the preamendment operation of the plan. With respect to the rules on spousal consent set forth in Notice 97-75, the plan must operationally comply, and be amended within the remedial amendment period set forth in Revenue Procedures 97-41 and 98-14 to reflect that operational compliance. Distributions must stop prior to the end of that remedial amendment period.

Line e. For a defined benefit plan, an actuarial increase is required with respect to a participant who retires in a calendar year after the calendar year in which the participant attains age 70½, for the period after age 70½ in which the participant was not receiving any benefits under the plan. For requirements on plan amendments to provide for actuarial increases for participants who retire in a calendar year after they reach age 70½, see Explanation No. 2A, Minimum Vesting Standards, Defined Benefit Plans.

For the special rule governing distributions to participants who made, and still have in effect, valid elections under section 242(b)(2) of TEFRA, see IV below.

401(a)(9)(A) and (C)

Proposed reg. 1.401(a)(9)-1 Q&A B-2

Proposed reg. 1.411(d)-4, Q&A 10

Notice 96-67, 1996-53

Announcement 97-24, 1997-11 I.R.B. 24

Announcement 97-70, 1997-29 I.R.B. 14

Notice 97-75, 1997-51

Line f. When the distribution of the participant's entire interest is not made in a lump sum, the plan must require the distribution to be made in one or more of the following ways: over the life of the participant, over the life of the participant and a designated beneficiary, over a period certain not extending beyond the life expectancy of the participant, or over a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

401(a)(9)(A)

Proposed reg. 1.401(a)(9)-1 Q&A B-1.

II. Distributions After Death

Line a. A qualified plan must provide that if the participant dies before distribution of his or her entire interest is

completed, but after distributions have commenced under a method that satisfies I, above, the remaining portion will be distributed at least as rapidly as under the method of distribution being used on the date of the participant's death.

401(a)(9)(B)(i)

Proposed reg. 1.401(a)(9)-1 Q&A B-4.

Notice 97-75

Line b. A qualified plan must provide that if a participant dies before distributions are treated as having begun to the participant, distributions will be made as follows. Any portion of the participant's interest that is not distributed to a beneficiary designated by the participant must be distributed within five years of the participant's death (the five-year rule). Any portion of the participant's interest that is payable to a beneficiary designated by the participant must be distributed either under the five-year rule or under the following exception to the five-year rule. Under the exception, the portion of the participant's interest payable to a designated beneficiary must be distributed, commencing within one year of the participant's death, over the life of the beneficiary or over a period certain not extending beyond the life expectancy of the beneficiary. If the designated beneficiary is the participant's surviving spouse, distributions to the spouse may be postponed until the year in which the participant would have attained age 70½, and if the surviving spouse dies before distributions to such spouse begin, the date of death of the surviving spouse will be substituted for the date of death of the participant in applying the five-year rule and the exception to the five-year rule.

401(a)(9)(B)(ii), (iii), and (iv)

Proposed reg. 1.401(a)(9)-1 Q&A C-1.

Notice 97-75

III. Minimum Distribution Requirements

Proposed regulations section 1.401(a)(9)-1 describes the minimum distribution that must be made to a participant or beneficiary in each distribution calendar year in order to satisfy section 401(a)(9). Section 401(a)(9)(G) also provides that any distribution that is required under the incidental benefit requirement of section 401(a) (i.e., the requirement that death and other nonretirement benefits payable under the plan be incidental to the primary purpose of the plan) is to be treated as a distribution required under section 401(a)(9). Thus, distributions must be made in accordance with both the minimum distribution requirements in section 1.401(a)(9)-1 and, for calendar years beginning after 1988, the minimum distribution incidental requirements of section 1.401(a)(9)-2 of the proposed regulations. A plan must therefore provide that distributions will be made in accordance with the regulations under section 401(a)(9), including section 1.401(a)(9)-2. A plan may, of course, also set forth the manner of calculation of minimum distributions, provided such provisions are not inconsistent with section

401(a)(9) and the regulations thereunder. In addition, any plan provisions regarding optional provisions governing plan distributions may not conflict with section 401(a)(9) and the regulations thereunder.

401(a)(9)(A), (B), and (G)

Proposed regs. 1.401(a)(9)-1 Q&As A-3 and F-4A, & 1.401(a)(9)-2 Q&A 1A

IV. TEFRA Transitional Rule

Section 242(b)(2) of TEFRA permitted a participant to make a transitional rule election that would govern the distribution made to the participant. If the participant made such an election, and the election is still valid, the distribution made pursuant to the election must satisfy the requirements of IRC section 401(a)(9) as in effect on December 31, 1983. Such a distribution must also satisfy the spousal consent and other survivor benefit rules of sections 401(a)(11) and 417.

Proposed reg. 1.401(a)(9)-1 Q&A J-1.